IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C.R.No.5970 of 2006
Date of Decision : November 13, 2006.

Kulwinder Singh ..... Petitioner

Vs.

Balwinder Singh ..... Respondent

Coram : Hon'ble Mr.Justice P.S.Patwalia

* * *

Present : Mr.Gurcharan Dass, Advocate
for the petitioner.

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P.S.Patwalia, J. (Oral) :

The present revision petition has been filed challenging order dated 11.8.2005 passed by the learned Civil Judge (Junior Division), Ludhiana and order dated 2.6.2006 passed by the learned Additional District Judge, Ludhiana whereby an application under Order 39 Rules 1 and 2 filed by the petitioner-plaintiff in the suit seeking temporary injunction was dismissed by the trial court and first appeal filed by the petitioner also dismissed by the Lower Appellate Court.

A reading of the orders of the courts below would make it apparent that property measuring 600 sq. yards was divided among four brothers vide family settlement dated 20.11.2003. All brothers took possession of their respective portions in pursuance to the family settlement. The plaintiff had approached the Court seeking an injunction restraining the defendant from removing the machinery which was lying on a plot of 300 sq. yards which was joint between him and his brother Narinder Singh. The

trial court appointed Local Commissioner who submitted a report. The site plan prepared by the Local Commissioner was exactly as per the family settlement. The trial court further found that Narinder Singh one of the brothers had sold his 150 sq. yards to defendant Balwinder Singh for a valuable consideration of Rs. 5 lacs. It is therefore that the trial court found that the plaintiff had no right in property which was given to Narinder Singh and which had been sold by Narinder Singh to the defendant. The injunction was therefore declined by the trial court with the following observations :-

> *"At the very outset, it is appropriate to mention that this fact is not disputed between the parties that property measuring 600 sq. yards had been divided between the four brothers vide family settlement dated 20.11.2003. Admittedly, the portion of 150 sq. yards towards the property No.469 fell to the share of Satwant Singh and adjoining to that 150 sq. yards fell to the share of Balwinder Singh and adjoining to that 150 sq. yards fell to the share of Narinder Singh and adjoining to that 150 sq. yards fell to the share of the plaintiff Kulwinder Singh. Thus, the entire 600 sq. yards was divided between the four brothers. Family settlement dated 20.11.2003 makes it clear that parties to that family arrangement, took the possession of their respective portions. The plaintiff has come to this court to seek the injunction that defendant be restrained from removing the Machinery which is lying in the Plot of 300 Sq. Yards which is joint between his and his brother Narinder Singh. There is no reference of*

any Machinery in the family arrangement dated 20.11.2003. A local Commissioner was appointed by this court who has submitted his report and the site plan prepared by him is exactly as per the settlement which took place between the brothers. His report has shown that property measuring 600 sq. yards is divided in four parts and there is a well between the plaintiff and Narinder Singh. Defendants have placed on record an agreement to sell executed by Narinder Singh in his favour vide which he sold his portion of 150 sq. yards to defendant for a valuable consideration of Rs.5,00,000/-. Agreement dated 12.5.2005 shows that possession of that portion was handed over by Narinder Singh, which as per the family arrangement was with Narinder Singh, to defendant Balwinder Singh. Narinder Singh has not come forward to support the version of the plaintiff. The plaintiff is having no locus-standi to challenge the agreement executed by Narinder Singh in favour of the defendant. In case Machinery which is installed in the property of Narinder Singh was belonging to the plaintiff then, he would have made some provisions in the family settlement regarding that Machinery. So, after the family settlement, when family settlement has been admitted by both the parties, the plaintiff is left with no right in property which was given to Narinder Singh, which as per the defendant has been sold by Narinder Singh to him, this is not the

case of the plaintiff that machinery is installed in the plot which fell in his share."

The aforesaid finding of fact has been affirmed by the Lower Appellate Court with the following observations :-

"After considering the submissions of ld. counsel for the parties I am of the view that for grant of injunction plaintiff is required to prove prima facie case, balance of convenience and irreparable loss and injury. Plaintiff is required to prove that he is in possession of the property owned by Narinder Singh. There is machinery installed in the property of Narinder Singh. He has entered into an agreement to sell with Balwinder Singh defendant copy of which is on the file. There is intervening passage from the portion of Balwinder Singh to the portion of Narinder Singh. Local Commissioner entered in the property in dispute from the portion of Balwinder Singh and there was wall in between the portion of Balwinder Singh and portion of Narinder Singh. So, plaintiff is not proved to be owner of property in question. So, plaintiff is not entitled for injunction. In case Hari Mohan Vs. Shri Kirpa Ram (Supra) a suit was filed for declaration that plaintiff is owner in possession of the land and he has become owner by efflux of time. In case Nagar Mal Vs. Ram Saran (Supra) plea was that plaintiff has become owner on the basis of agreement to sell. In case Jagir Singh Vs. Subeg Singh (Supra) defendant was recorded in

possession in the revenue record and there after the entries were unauthorized changed in favour of the other party. So, the court had ordered both the parties to maintain status-quo. Authorities cited by the counsel for the appellant are distinguishable on facts and ratio of said authorities cannot be applied to the facts of the present case. Ld. Trial court has exercised jurisdiction keeping in view the principle of grant of temporary injunction. There is no ground to interfere in the same. So, appeal being without any merit is dismissed."

I find no error in the view taken by the courts below to warrant interference by this Court by way of the present revision petition.

For the aforesaid reason I find no merit in the present revision petition and the same is accordingly dismissed.

November 13, 2006 (P.S.Patwalia)
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